

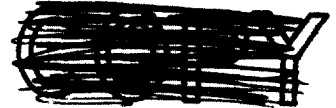
EX PARTE OR LATE FILED

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY



In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Access Charge Reform,)	
Price Cap Performance Review)	
for Local Exchange Carriers,)	CC Docket Nos.
Transport Rate Structure and)	96-262, 94-1, 91-213, 95-72
Pricing, End User Common)	
Line Charge)	

To: The Commission

**EX PARTE COMMENTS OF THE PUBLIC BROADCASTING SERVICE
AND NATIONAL DATACAST, INC.**

1. The Public Broadcasting Service ("PBS") and its subsidiary, National Datacast, Inc. ("Datacast") respectfully submit these Comments in response to the Petition for Reconsideration of National Public Radio, Inc. ("NPR") filed on February 12, 1998 (the "NPR Petition"), addressing the *Fourth Order on Reconsideration* in the above-captioned proceeding.^{1/} PBS is a nonprofit organization whose members are the licensees of nearly all of the nation's 351 public television stations.

^{1/} *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Fourth Order on Reconsideration*, *Access Charge Reform*, *Price Cap Performance Review for Local Exchange Carriers*, *Transport Rate Structure and Pricing*, *End User Common Line Charge*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, Report and Order, FCC 97-420 (released December 31, 1997)(hereinafter, the "*Fourth Order on Reconsideration*").

2. In the *Fourth Order on Reconsideration*, in response to a petition filed by PBS and the Association of America's Public Television Stations,^{2/} the Commission determined that Universal Service Fund ("USF") contributions would not be required from "broadcasters, including ITFS licensees, that engage in non-common carrier interstate telecommunications."^{3/} NPR requests that the Commission clarify that NPR, by virtue of its responsibilities as manager of the Public Radio Satellite System, is not obligated to contribute to the Universal Service Fund. PBS supports NPR's position, for the reasons stated by NPR. As PBS is also a public broadcasting entity, and thus is subject to many of the same public interest considerations as NPR, PBS and Datacast are filing these Comments to explain, as set forth below, why they believe that the Commission's prior rulings establish that their operations are not subject to USF contribution obligations.^{4/}

3. PBS's members are all broadcast television and ITFS licensees and, the same as public radio broadcast licensees, are explicitly exempt, including when they transmit telecommunications via the vertical blanking interval ("VBI") or aural subcarriers of their TV broadcast or ITFS signals.^{5/} Datacast enters into contracts with third parties to distribute data via the VBI's of public television stations and as such in effect acts on behalf of PBS's exempt

^{2/} See Petition for Clarification and Exception or Waiver, filed September 2, 1997 ("PBS Petition").

^{3/} See *Fourth Order on Reconsideration* at ¶ 283.

^{4/} There is no question that neither PBS nor NPR is a common carrier. The only question is whether any of their operations constitute private telecommunications that the Commission has elected to make subject to a USF contribution obligation.

^{5/} See n. 3, *supra*. The exemption will also apply to the data-carrying capacity of the future digital television service to be offered by broadcast licensees.

member licensees.^{6/} It is reasonable to conclude that the Commission intended to exclude both member public television licensees and PBS (including Datacast) from USF contribution obligations arising from the use of the excess VBI capacity, since the PBS Petition described the VBI operation in some detail, and the Commission discussed the PBS Petition in connection with its announcement of the broadcaster exemption.^{7/}

4. PBS makes excess capacity in its satellite distribution system available to other parties. PBS only leases bare transponder capacity and does not provide any associated uplink or downlink earth station services. The Commission has explicitly exempted bare transponder leasing from contribution obligations. *See Fourth Order on Reconsideration* at ¶ 290.

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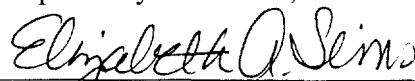
^{6/} PBS's members are all television licensees. PBS has no "owners" as such, and no entity other than public television licensees has any voice in the governing of PBS. No entity has any interest in Datacast other than PBS and a few individual public television licensees. Any net earnings from VBI data distribution services are either retained for internal development purposes by Datacast or distributed to PBS and the PBS member television stations whose VBI's are part of the data network.

^{7/} If there is any question as to whether the television broadcaster exemption covers PBS and its subsidiaries, then for the same reasons set forth in the NPR Petition, the Commission should clarify that they too are exempt.

5. For the foregoing reasons, PBS believes that its activities are not subject to USF contribution obligations; but it supports NPR and asks that if any clarification is needed with respect to public television, the Commission address that issue when it rules on the NPR Petition and reconfirm PBS's exemption.

Gregory Ferenbach, Acting General Counsel
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Respectfully submitted,



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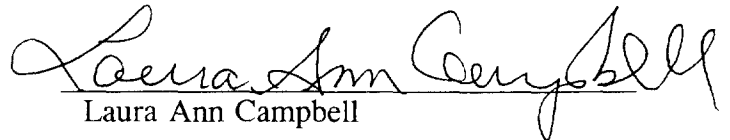
Counsel for The Public Broadcasting
Service and National Datacast, Inc.

April 7, 1998

CERTIFICATE OF SERVICE

I, Laura Ann Campbell, hereby certify that on this 7th day of April, 1998, I caused a copy of the foregoing "*Ex Parte* Comments of The Public Broadcasting Service and National Datacast, Inc." to be sent by first-class United States mail, postage prepaid, to the following:

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Laura Ann Campbell